



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

March 3, 2005

Sunoco, Inc.
Attn: Anna Morley
1801 Market Street
Philadelphia, PA 19103

Re: Settlement Agreement for Administrative Fine Docket No. AF 04-084

Dear Ms. Morley:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Waste Management Division Director, and accepted by Commissioner Michael P. Nolin on March 2, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael P. Sclafani,
Legal Assistant

cc: Anthony P. Giunta, P.G., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
James Martin, DES Public Information Officer
Lynn Woodard, DES WMD

Sunoco, Inc d/b/a Sun Co., Inc.
Attn: Anna Morley
1801 Market Street
Philadelphia, PA 19103
RE: Windham Sunoco, 94 Indian Road
Windham, NH – UST ID #0-113607

ADMINISTRATIVE FINE
No. AF 04-084

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division (“the Division”) and Sunoco, Inc., parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services (“DES”) is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. Sunoco, Inc. (“Sun”) is a Pennsylvania corporation doing business as Sun Co. in New Hampshire and has a mailing address of 1801 Market Street, Philadelphia, PA 19103.
3. On September 17, 2004 the Division issued Notice of Proposed Administrative Fine and Hearing No. AF 04-084 (“the Notice”) to Sun, seeking fines totaling \$1,600 for violations of New Hampshire Administrative Rule Part Env-Wm 1401 for three underground storage tanks (“USTs”).
4. Specifically, the Notice cited Sun for violating Env-Wm 1401.25(d) by failing to properly install and maintain overfill protection equipment on all three USTs. Pursuant to Env-C 607.05(j) the Division sought a fine of \$600 for the Facility.
5. The Notice further cited Sun for violating Env-Wm 1401.31(a) by failing to maintain leak monitoring equipment in good working order at all times to continuously perform their original design function and by failing to perform the annual test for proper operation. Pursuant to Env-C 607.05(d) the Division sought a fine of \$1,000.
6. In order to settle this matter, the Division and Sun have agreed to the terms of this Settlement Agreement (“Agreement”), as set forth herein.
7. Of the proposed \$600 fine for failing to properly install and maintain overfill protection equipment, 20% or \$120 shall be suspended due to the respondent attaining compliance. An additional 20% or \$120 shall be suspended due to the respondent’s cooperation in providing information and correcting the violations.

8. Of the proposed \$1,000 fine for failing to maintain leak monitoring equipment in good working order, 20% or \$200 shall be suspended due to the respondent attaining compliance. An additional 20% or \$200 shall be suspended due to the respondent's cooperation in providing information and correcting the violations.
9. The suspended portion of the proposed fine, in the amount of \$640 is contingent on Sun maintaining the subject UST facility in compliance with Env-Wm 1401 for a period of two years from the date of the execution of this document, or until transfer of ownership of the property, whichever occurs first. If Sun fails to maintain compliance during the required period the suspended portion of the proposed fine in the amount of \$640 shall be due immediately. If Sun maintains compliance for the prescribed period, the suspended portion of the fine shall be waived. Sun will notify DES immediately upon transfer of ownership of the UST facility.
10. Sun agrees to pay the remaining \$960 upon execution of the Agreement by Sun.
11. Payment under Paragraph #10 and any payment that becomes due pursuant to Paragraph #9 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095
12. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.
13. By executing this Agreement, Sun waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.
13. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Sunoco, Inc., the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.
14. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

Sunoco, Inc.

A large, bold, black "COPY" stamp is overlaid on the signature.

By: Tinamarie V. Smith

Duly Authorized

2/25/05

Date

DES Waste Management Division

A large, bold, black "COPY" stamp is overlaid on the signature.

Anthony Giunta, P.G. Director

3/1/05

Date

This Motion to Accept Settlement agreement is granted this 2ND day of March, 2005

A large, bold, black "COPY" stamp is overlaid on the signature.

Michael P. Nolin, Commissioner

Department of Environmental Services